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BEFORE THE ARIZONA CORPORATION COMMISSION

2005 DEC 19 P 4: 35

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Commissioner

IN THE MATTER OF THE  
APPLICATION OF QWEST  
COMMUNICATIONS CORPORATION  
D/B/A QWEST LONG DISTANCE FOR  
EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO INCLUDE AUTHORITY  
TO PROVIDE RESOLD AND  
FACILITIES-BASED LOCAL  
EXCHANGE AND RESOLD LONG  
DISTANCE SERVICES IN ADDITION  
TO ITS CURRENT AUTHORITY TO  
PROVIDE FACILITIES-BASED LONG  
DISTANCE SERVICES, AND PETITION  
FOR COMPETITIVE CLASSIFICATION  
OF PROPOSED SERVICES WITHIN THE  
STATE OF ARIZONA

DOCKET NO. T-02811B-04-0313

QWEST CORPORATION'S RESPONSE  
TO PROCEDURAL ORDER

Qwest Corporation ("QC") hereby files its response to the Procedural Order dated December 14, 2005 (the "Procedural Order"). The Procedural Order purports to join QC as an indispensable party to this proceeding, and orders QC to make a filing in this docket regarding the "effect on Qwest Corporation of granting Qwest Communications Corporation's application."

1 The Procedural Order recites Rules 19(a) and 21 of the Arizona Rules of Civil Procedure  
2 as authority for the joinder of QC as an indispensable party. As a preliminary matter, QC does  
3 not agree that either or both of those Rules may properly be interpreted to permit the joinder of  
4 QC.<sup>1</sup> Further, the sole factual basis for the joinder, that QC may be adversely impacted by  
5 revenue losses, if QCC is granted the authority it requests to provide services in direct  
6 competition with QC, does not amount to an interest or a circumstance that could support an  
7 objection or any other litigation position from QC. Competition is the primary policy objective  
8 of the Telecommunications Act, and an increase in competition leads to lower prices and better  
9 and more advanced services.

10 <sup>1</sup> QC did not ask to join in this proceeding, and no party to the proceeding has requested joinder  
11 of QC. Rule 19(a) requires the joinder of a party to an action if the person (or company in this  
12 instance) claims an interest relating to the subject of the action and will not be able to defend that  
13 interest unless joined. For the reasons stated in this filing, QC disclaims an interest in whether  
14 QCC's application for a certificate of convenience and necessity should be granted.

15 Another basis for joining a party under Rule 19 applies where the absence of the person will not  
16 permit complete relief to be accorded among those already parties. The Procedural Order does  
17 not rely on that part of the Rule as a reason to join QC.

18 The Procedural Order also recites Rule 21. However, QC submits that it is unclear whether Rule  
19 21, which is titled "Misjoinder and non-joinder of parties," and which concerns primarily  
20 whether misjoinder of parties is grounds for dismissal of an action, or the severance of claims,  
21 may be relied upon for the joinder of a party that is not otherwise properly joined by another  
22 Rule such as Rule 19. The full text of Rule 21 is as follows:

23 Rule 21. Misjoinder and non-joinder of parties

24 Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or  
25 added by order of the court on motion of any party or of its own initiative at any stage of  
26 the action and on such terms as are just. Any claim against a party may be severed and  
proceeded with separately.

Thus, QC objects to the joinder. QC files its response to the Procedural Order without waiver of  
that objection.

1 QC is aware that the Staff has argued in this docket for the imposition of adverse burdens  
2 upon QC as a condition of a certificate for QCC, including obligations requiring QC to provide  
3 reports on the competitive activities or successes of a CLEC. Such burdens are unprecedented in  
4 the history of the Commission's granting of hundreds of CLEC certifications since the passage of  
5 the Telecommunications Act, and QC agrees with the facts, law and conclusions asserted by  
6 QCC in its briefing on these issues. But, under the Procedural Order, the only adverse interest  
7 noted by the Administrative Law Judge is the potential loss of revenue from competitive  
8 activities of QCC. See Procedural Order, at p. 3, lines 1-4. The Administrative Law Judge, after  
9 hearing this case and having considered the briefing, did not reference reporting obligations or  
10 any of the other burdens upon QC as argued by the Staff; thus, it is QC's understanding that loss  
11 of revenues due to competition is the only adverse impact upon QC that could result from this  
12 docket. And, as stated above, QC does not consider the potential of competition as grounds for  
13 participating in the docket considering QCC's application for a certificate.

14 As the Commission is aware, QC is an Incumbent Local Exchange Carrier ("ILEC")  
15 under the Telecommunications Act of 1996 (the "Act")<sup>2</sup> and the rules of this Commission. QC  
16 is also a Bell Operating Company ("BOC") under the Act. The Act was passed by Congress in  
17 an effort "to promote competition and reduce regulation in order to secure lower prices and  
18 higher quality services for American telecommunication consumers and encourage the rapid  
19 deployment of new telecommunications technologies."<sup>3</sup> By passing of the Act Congress "ended  
20 the longstanding regime of state-sanctioned monopolies [of local telephone service]" by  
21 "fundamentally restuctur[ing] local telephone markets."<sup>4</sup>

22 The Act requires providers of telecommunications services to interconnect directly or  
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24 <sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56 ("Act"). See 47 U.S.C. §§ 15 *et seq*

25 <sup>3</sup> *Id.*

26 <sup>4</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999); see also *Verizon Md. Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 638 (2002) (Act created new telecommunications regime designed to foster competition in local telephone markets).

1 indirectly with the facilities and equipment of other providers.<sup>5</sup> Under the Act, ILECs have  
2 additional obligations to provide to requesting carriers (i) interconnection to its local exchange  
3 network that is equal in quality to that provided by the local exchange carrier to itself or any  
4 affiliate, on nondiscriminatory rates, terms and conditions, (ii) nondiscriminatory access to  
5 network elements on an unbundled basis, (iii) telecommunications service for resale at wholesale  
6 rates without unreasonable or discriminatory conditions or limitations upon the resale of such  
7 service, and (iv) physical collocation of equipment necessary for interconnection or access to  
8 unbundled network elements on rates, terms and conditions that are just, reasonable, and  
9 nondiscriminatory.<sup>6</sup>

10 Other provisions of the Act apply only to BOCs<sup>7</sup> one of which is Qwest Corporation,  
11 formerly known as U S WEST Communications Corporation, Inc. Among those provisions are  
12 47 U.S.C. 271 and 272, which read together provide that originating interLATA services may  
13 only be provided by an affiliate separate from the BOC ILEC.<sup>8</sup> The separate affiliate must  
14 operate independently from the BOC.<sup>9</sup> Sweeping nondiscrimination safeguards apply to the  
15 dealings between a Section 272 affiliate and the BOC, to assure that the BOC does not  
16 discriminate between that affiliate and any other entity in the provision or procurement of goods,  
17 services, facilities, and information, or in the establishment of standards.<sup>10</sup> The wholesale  
18 services that QC provides to competitors on a non-discriminatory basis are provided at rates that  
19 are determined to be fair, just and reasonable by the Commission.

20 Consequently, in light of the pro-competition public policy objectives of the Act, the  
21 FCC, and the Arizona Corporation Commission, and the sweeping nondiscrimination provisions  
22 in state and federal telecommunications laws and regulations, QC does not typically intervene in

23 <sup>5</sup> 47 U.S.C. §§ 153(44), 251(a).

24 <sup>6</sup> 47 U.S.C. § 251 (c).

25 <sup>7</sup> See 47 U.S.C. § 153(4).

25 <sup>8</sup> See 47 U.S.C. § 272 (a).

26 <sup>9</sup> See 47 U.S.C. § 272(b).

26 <sup>10</sup> See 47 U.S.C. § 272(c), (e).

1 the Certificate of Convenience and Necessity ("CC&N") applications filed by competitors. As  
2 the Commission is well aware, a great many competitive local exchange providers have been  
3 certificated in Arizona. Qwest is committed to serving every one of them according to the  
4 requirements of law.

5 The foregoing comprises QC's complete statement of position regarding the application,  
6 and response to the Procedural Order. QC does not believe any further proceedings with respect  
7 to the Procedural Order are necessary.

8 RESPECTFULLY SUBMITTED, this 19th day of December, 2005,

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10  
11 By: 

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22 ORIGINAL + 13 copies filed this  
23 19th day of December, 2005:

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1 COPY of the foregoing delivered by hand  
2 this 19th day of December, 2005 to:

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